IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 22, 2009 Session

CHRISTOPHER JONES v. BEDFORD COUNTY, TENNESSEE

Appeal from the Circuit Court for Bedford County
No. 9276 F. Lee Russell, Judge

No. M2009-01108-COA-R3-CV - Filed December 15, 2009

This is an appeal from a Governmental Tort Liability action against Bedford County by a former inmate in the Bedford County Jail. Plaintiff alleged that the County was liable to him for its negligent supervision of a corrections officer who allegedly sexually assaulted Plaintiff while incarcerated in the jail. The trial court dismissed Plaintiff's claim following a bench trial upon the implicit finding that there was no evidence that any person with supervisory authority was on notice of information that would lead them to suspect a future sexual assault. Plaintiff appealed. We affirm the trial court's dismissal of Plaintiff's claims finding that the evidence in the record does not preponderate against the trial court's findings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and ANDY D. BENNETT, J., joined.

Phillip L. Davidson, Nashville, Tennessee, for the appellant, Chris Jones.

S. Todd Bobo and M. Wyatt Burk, Shelbyville, Tennessee, for the appellee, Bedford County, Tennessee.

OPINION

This is an appeal from a Governmental Tort Liability action filed by the plaintiff, Chris Jones, against Bedford County for negligent supervision of a corrections officer, who allegedly sexually assaulted Plaintiff while incarcerated in the Bedford County Jail. He alleged that the County "knew, or should have known of [the correction officer's] sexually oriented behavior" and that the County was negligent in failing to properly supervise him.

Officer Raymur, the alleged assailant, was hired in January 2001 by the Bedford County Sheriff's Department as a corrections officer in the Bedford County Jail. Five months later, Plaintiff was incarcerated in the jail. Plaintiff claims he was sexually assaulted by Officer Raymur on several

occasions between October 2001 and March 1, 2002 while incarcerated;[1] however, Plaintiff did not register a complaint with jail officials until March 5, 2002. The County then took immediate steps to investigate the matter, during which time it placed Officer Raymur on administrative leave. Shortly after the investigation into Officer Raymur was completed, the Sheriff of Bedford County terminated his employment.

Plaintiff was released from the Bedford County Jail on April 8, 2002. On September 2, 2002, he filed this action against Bedford County seeking to recover for injuries received as a result of the alleged sexual assaults. On July 10, 2003, the County filed a motion for summary judgment. In response to the County's motion, Plaintiff amended his complaint on December 20, 2004 to add a claim for negligent supervision. Thereafter, the County filed a second motion for summary judgment. On August 17, 2005, the trial court granted the County's motion for summary judgment. That decision was appealed to this court. In an opinion entered October 31, 2007,[2] this court held that material disputes of fact existed concerning the issue of foreseeability as it pertained to Plaintiff's claim of negligent supervision; therefore, we reversed and remanded that issue for further proceedings.[3]

On remand, Plaintiff filed a motion requesting that the trial judge recuse himself, which was denied. A trial was conducted on December 18, 2008, regarding the sole remaining issue of negligent supervision. At the conclusion of the trial, the trial court made two significant findings. One, the trial court found that prior to registering his complaint with the jail officials on March 5, 2002, there was nothing

> to suggest that anyone with hiring and firing capacity or with the capacity to punish this officer in any way was put on notice. . . . [a]nd there is nothing – no reason for the folks in decision making to know that there was a problem or act negligently in processing information that was properly provided to them.

Two, the trial court found that the County acted promptly and appropriately when it learned of the allegations against Officer Raymur on March 5, 2002. A Final Order was entered on May 6, 2009. This appeal followed.

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[1] March 1, 2002 was the date of the final alleged assault. No assaults occurred after Plaintiff notified jail officials of Officer Raymur's actions.

[2] *See Jones v. Bedford County*, No. M2006-02710-COA-R3-CV, 2007 WL 3202760 (Tenn. Ct. App. Oct. 31, 2007).

[3] Plaintiff also asserted other claims which were summarily dismissed prior to the first appeal. Plaintiff did not appeal the dismissal of those claims, only that of negligent supervision. Thus, the only claim that is at issue on this appeal is that of the County's alleged negligent supervision of Officer Raymur.

STANDARD OF REVIEW

The standard of review of a trial court's findings of fact is de novo and we presume that the findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Rawlings v. John Hancock Mut. Life Ins. Co.*, 78 S.W.3d 291, 296 (Tenn. Ct. App. 2001). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). Where the trial court does not make findings of fact, there is no presumption of correctness and we "must conduct our own independent review of the record to determine where the preponderance of the evidence lies." *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999). We also give great weight to a trial court's determinations of credibility of witnesses. *Estate of Walton v. Young*, 950 S.W.2d 956, 959 (Tenn. 1997); *B & G Constr., Inc. v. Polk*, 37 S.W.3d 462, 465 (Tenn. Ct. App. 2000). Issues of law are reviewed de novo with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

ANALYSIS

Plaintiff raises two issues on appeal. He contends the trial court abused its discretion by denying the motion to recuse. He also contends the dismissal of his negligent supervision claim was in error because the evidence preponderated against the trial court's ruling that the Bedford County Sheriff's Department could not have foreseen one of its corrections officer's sexual assault of him.

RECUSAL

The party challenging a judge's impartiality "must come forward with some evidence that would prompt a reasonable, disinterested person to believe that the judge's impartiality might reasonably be questioned." *Davis v. Tenn. Dep't of Employment Sec.*, 23 S.W.3d 304, 313 (Tenn. Ct. App. 2000) (citing Tenn. S. Ct. R. 10, Canon 3(E)(1); *Chumbley v. People's Bank & Trust Co.*, 57 S.W.2d 787, 788 (Tenn. 1933); *Holley v. Holley*, No. 03 A01-9812-CH-00391, 1999 WL 1131322, at *4 (Tenn. Ct. App. Dec. 10, 1999)). To be relevant, the proof must pertain to the "judge's personal bias or prejudice against a litigant." *Id*. The decision to recuse rests within the discretion of the trial judge and will not be reversed on appeal absent the finding of an abuse of discretion. *Moody v. Hutchinson*, 247 S.W.3d 187, 201 (Tenn. Ct. App. 2007). Further, "the mere fact that a judge has ruled adversely to a party or witness in a prior judicial proceeding is not grounds for recusal." *Davis v. Liberty Mutual Ins. Co.,* 38 S.W.3d 560, 565 (Tenn. 2001).

We find no evidence in this record that would prompt a reasonable, disinterested person to believe that the judge's impartiality might reasonably be questioned. Plaintiff's only assertion was that because the trial court had twice ruled against him in this action, the court was prevented from making an unbiased ruling. We find this wholly insufficient. Accordingly, we have determined that there is no basis upon which to conclude that the trial court abused its discretion in denying Plaintiff's motion.

NEGLIGENT SUPERVISION

The Tennessee Governmental Tort Liability Act codifies the common law rule that "all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities." Tenn. Code Ann. § 29-20-201(a). The statutory scheme, however, also provides exceptions including a "general waiver of immunity from suit for personal injury claims" as set forth in Tenn. Code Ann. § 29-20-205 "for injury proximately caused by a negligent act or omission of any employee within the scope of his employment," unless the injury arises out of one of several enumerated exceptions to this section, such as the intentional tort exception. *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 79 (Tenn. 2001). Certain, but not all intentional torts are excluded from the exception.[4] *Id.* The intentional torts of assault and battery are not excluded. *Id*. at 84. Thus, a county may be held liable for injuries resulting from an assault and battery committed by a county employee if it is established that the injuries inflicted on the plaintiff were "proximately caused by a negligent act or omission" of supervisory personnel due to the failure to take reasonable precautions from the foreseeable risk.[5] *See id.*

Plaintiff contends Bedford County is liable because supervisory personnel of the Sheriff's Department negligently failed "to properly supervise" Correctional Officer Raymur when the County "knew, or should have known of his sexually oriented behavior."

In the first appeal of this action we stated:

> In order for the County to be liable for failing to properly supervise its employee, it must be established that the County should have reasonably foreseen or anticipated

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[4] The intentional torts subject to the statutory waiver are "false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights." Tenn. Code Ann. § 29-20-205(2).

[5] In *Limbaugh*, the court noted that "section 29-20-205 of the GTLA removes immunity for injuries proximately caused by the negligent act or omission of a governmental employee except when the injury arises out of only those specified torts enumerated in subsection (2)." *Limbaugh*, 59 S.W.3d. at 84. The court then held:

> Applying our conclusions to the present case, we first reiterate that Ms. Ray's assault of Ms. Limbaugh [the plaintiff] was a foreseeable consequence of [Coffee Medical Center]'s failure to take reasonable precautions to protect its residents from the risk of abuse by this aggressive nursing assistant. Based on the plain language of section 29-20-205, the injury inflicted on Ms. Limbaugh was "proximately caused by a negligent act or omission" of this nursing home's supervisory personnel. Although it is that negligence of which the plaintiff complains, it is clear that Ms. Limbaugh's injuries "arose out of" the intentional torts of assault and battery committed by Ms. Ray. Because these torts are conspicuously absent from the intentional tort exception rendering governmental entities immune from liability for injuries, we hold that the clearly negligent defendant is not immune under this exception.

Id.

> that the plaintiff would be at risk of the injuries complained about. *Limbaugh*, 59 S.W.3d at 84; *Mason v. Metro. Gov't of Nashville*, 189 S.W.3d 217, 222 (Tenn. Ct. App. 2005). The foreseeability requirement does not, however, require that the County foresee the exact manner in which the injury takes place, provided it is determined that the County could foresee, or through the exercise of reasonable diligence should have foreseen, the general manner in which the injury or loss occurred. *McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991) (citing *Roberts v. Robertson County Bd. of Educ*., 692 S.W.2d 863, 871 (Tenn. Ct. App. 1985); *Wyatt v. Winnebago Indus., Inc.*, 566 S.W.2d 276, 281 (Tenn. Ct. App. 1977)).

Jones v. Bedford County, 2007 WL 3202760, at *3. Therefore, the dispositive issue in this appeal is whether the County should have reasonably foreseen or anticipated that Officer Raymur would sexually assault an inmate. *See Limbaugh*, 59 S.W.3d at 84.

We find it significant, as the trial court did, that as soon as Plaintiff registered an official complaint with the jail, thereby putting the supervisory authorities on actual notice of the allegations, Officer Raymur was placed on administrative leave and swift action was taken by the County to investigate Plaintiff's allegations of assault. We also find it significant that neither the Sheriff nor any county officials were aware of any allegations regarding Officer Raymur prior to this formal complaint or were aware of any facts that would place the burden upon them to conduct an investigation. Although these are significant facts, they are not dispositive of Plaintiff's claim of negligent supervision.

Under the theory of negligent supervision, which is the basis of Plaintiff's GTLA claim,

> [a] county may be liable for injuries resulting from an assault and battery committed by a county employee if it is established that the injuries inflicted on the plaintiff were *"proximately caused by a negligent act or omission of supervisory personnel due to the failure to take reasonable precautions from the foreseeable risk."*

Jones, 2007 WL 3202760, at *3 (quoting *Limbaugh*, 59 S.W.3d at 84) (emphasis added). This is based upon the principle that the knowledge of a supervisory agent of the principal may be imputed to the principal under certain circumstances. *Hurst Boillin Co. v. S.S. Jones & Co.*, 279 S.W. 392, 393 (Tenn. 1925). As our Supreme Court noted in *Hurst*:

> The law imputes to the principal, and charges him with, all notice or knowledge relating to the subject-matter of the agency which the agent acquires or obtains while acting as such agent and within the scope of his authority, or, according to the weight of authority, which he may previously have acquired, and which he then had in mind, or which he had acquired so recently as to reasonably warrant the assumption that he still retained it: Provided, however, that such notice or knowledge will not be imputed: (1) Where it is such as it is the agent's duty not to disclose; (2) where the agent's relations to the subject-matter are so adverse as to practically destroy the

> relation of agency; and (3) where the person claiming the benefit of the notice, or those whom he represents, colluded with the agent to cheat or defraud the principal.

Id., 279 S.W. at 393 (quoting Mechem on Agency (2d Ed.), section 1813, p. 1397). However, there are limitations to this rule:

> "*The rule which imputes to the principal the knowledge possessed by the agent applies only to cases where the knowledge is possessed by an agent within the scope of whose authority the subject-matter lies; in other words, the knowledge or notice must come to an agent who has authority to deal in reference to those matters which the knowledge or notice affects.* The facts of which the agent had notice must be within the scope of the agency, so that it becomes his duty to act upon them or communicate them to his principal. As it is the rule that whether the principal is bound by contracts entered into by the agent depends upon the nature and extent of the agency, so does the effect upon the principal of notice to the agent depend upon the same conditions. Hence, in order to determine whether the knowledge of the agent should be imputed to the principal, it becomes of primary importance to ascertain the exact scope and extent of the agency."

Id. (quoting *Trentor v. Pothen*, 49 N.W. 129-30 (Minn. 1891)) (emphasis added).

The only supervisor who possessed any information that arguably put the County on notice of Officer Raymur's alleged acts was Sergeant Levi Shouse, who was Officer Raymur's direct supervisor. Therefore, whether the County could foresee, or through the exercise of reasonable diligence should have foreseen, the general manner in which Plaintiff was injured is dependent upon whether Sergeant Shouse could foresee or through the exercise of reasonable diligence should have foreseen the general manner in which Plaintiff was injured. *See McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991); *Roberts v. Robertson County Bd. of Educ.*, 692 S.W.2d 863, 871 (Tenn. Ct. App. 1985); *Wyatt v. Winnebago Indus., Inc.*, 566 S.W.2d 276, 281 (Tenn. Ct. App. 1977).

Plaintiff argues that Sergeant Shouse, as a supervisor, had sufficient information that would put the County on notice of the threat that Officer Raymur posed to the inmates. Reports generated during the County's investigation following Plaintiff's complaint of May 5, 2002 indicate that some corrections officers were aware that Officer Raymur often made vulgar comments to inmates. These comments, although vulgar, crude, and boorish, did not give any of those who heard them cause for concern or reason to suspect a possible sexual assault by Officer Raymur. Sergeant Shouse testified that he was aware that Officer Raymur and several inmates often made vulgar remarks, some of which included sexual innuendos, but he explained that these comments did not cause him to believe that there was any possibility that Officer Raymur posed a threat of a sexual assault upon any

inmate.[4] Moreover, the record indicates that vulgar remarks and sexual innuendos were made by inmates and that there was often banter with and by correction officers. Several witnesses testified that this form of communication came with the territory, so-to-speak.

There was, however, one alleged incident which Sergeant Shouse heard about prior to the last alleged assault on Plaintiff that requires our examination. As Sergeant Shouse explained, he overheard a conversation, which suggested that Officer Raymur pulled down the pants of a male inmate. The conversation overheard by Sergeant Shouse did not suggest a concern; it was merely a casual conversation by others that included a reference to this alleged incident. Although he was not particularly concerned about the alleged incident, believing it may have been an inappropriate prank, not an indication of a sexual assault, Sergeant Shouse asked Officer Raymur about it and Officer Raymur denied that it happened. The better part of discretion would have been for Sergeant Shouse to inquire with the inmate who may have been the subject of this alleged incident, however, Sergeant Shouse did not pursue the matter. Nevertheless, we do not find this one alleged incident, or the cumulative effect of this incident with the frequent vulgar, crude and boorish language used by Officer Raymur, sufficient to cause Sergeant Shouse or any reasonable person in a supervisory role to suspect that Officer Raymur would sexually assault any inmate. To the contrary, the record is replete with evidence, notably reports made after the formal complaint, that other officers and inmates heard Officer Raymur use vulgar language and that they all believed they were made in jest. Accordingly, we find the evidence does not preponderate against the trial court's findings and affirm the dismissal of Plaintiff's claims.

In Conclusion

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Christopher Jones.

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FRANK G. CLEMENT, JR., JUDGE

[4] The record indicates that Officer Raymur made a report regarding an inmate who had violated the hygiene policy; the inmate had smeared human feces on himself and his cell floor. It was reported, and Officer Raymur admitted, that he had instructed the inmate who had smeared his feces on himself to "wash good, even Mr. Winky." Sergeant Shouse subsequently testified that due to the unique circumstances – that feces was smeared on the inmate and that vulgar language was common in the jail, this did not give him any cause for concern that Officer Raymur would sexually assault an inmate.